

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL CASE NO. 1:11cv128**

**DANIE A. JOHNSON,**

**Plaintiff,**

**vs.**

**TRIAD DESIGN GROUP, P.A.;**  
**SAMET CORPORATION;**  
**L. ALLAN HILL, individually;**  
**and JOHN PARROTT WARREN,**  
**individually,**

**Defendants.**

**MEMORANDUM OF DECISION  
AND ORDER**

**THIS MATTER** is before the Court on the Defendants' Partial Motions to Dismiss [Docs. 17 and 20]; the Magistrate Judge's Memorandum and Recommendation regarding the disposition of those motions [Doc. 28]; and the Plaintiff's Objection to Memorandum and Recommendation [Doc. 30].

The Defendants move to dismiss only the Plaintiff's claims for attorneys' fees and statutory damages on the grounds that any copyright infringement that occurred commenced prior to the registration of the copyright. In the absence of any discovery as to when the alleged copyright infringement occurred and, particularly, when such infringing acts "commenced," the Court finds the Defendants' Motions to be premature. See Streit v. Bushnell, 424

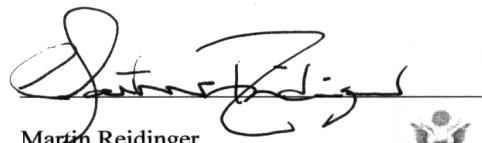
F.Supp.2d 633, 643 (S.D.N.Y. 2006). Accordingly, the Court denies the Defendants' Partial Motions to Dismiss. The Defendants may renew their motions upon the close of discovery in this case.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Plaintiff's Objection to Memorandum and Recommendation [Doc. 30] is **SUSTAINED**, and the Memorandum and Recommendation of the Magistrate Judge [Doc. 28] is **REJECTED**.

**IT IS FURTHER ORDERED** that the Defendants' Partial Motions to Dismiss [Docs. 17 and 20] are **DENIED** as premature.

**IT IS SO ORDERED.**

Signed: July 2, 2012

  
Martin Reidinger  
United States District Judge

